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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,866	03/23/2007	Fiorenzo Draghetti	99759.00017	3831
72535 7590 06/13/2011 MCCARTER & ENGLISH, LLP STAMFORD CANTERBURY GREEN 201 BROAD STREET, 9TH FLOOR STAMFORD, CT 06901			EXAMINER LANDRUM, EDWARD F	
			ART UNIT	PAPER NUMBER
			3724	
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			06/13/2011 PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/579,866

**Applicant(s)**

DRAGHETTI ET AL.

**Examiner**

EDWARD LANDRUM

**Art Unit**

3724

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 April 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 5-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 14-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-942)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 1.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-4 and 14-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In both claims 1 and 14, the phrase "the motorized actuating means that are....operably independent from the motorized locking means" is considered new matter. Page 8 of the disclosure specifically discloses the controller (58) operates locking means and actuating means at different times based on the data sent to the controller. Therefore operation of one is dependent on the other. Furthermore, if the cutting head is clamped by the locking means then the actuating means cannot be utilized, which is another example of how they are operably dependent. To overcome this rejection applicant needs to specifically point out in the claim what operably independent is in relation to the function or structure of the device.

In both claims 1 and 14 the last 7 lines of each claim are considered new matter. Both the locking and actuating means utilize the base plate (14) to either lock or move the cutting unit and therefore utilize the same structure. The pinion and groove found

within the base plate are required to either move or lock the cutting unit and therefore the base plate is a structure that is part of both the locking and actuating means.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 14, 15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seragnoli (U.S Patent No. 4,398,438) in view of Terstra et al (U.S Patent No. 4,882,962), hereinafter Terpstra, and Jourdan (U.S Patent No. 6,601,494), in further view of Pollock et al (U.S Patent No. 7,191,690), hereinafter Pollock.

Seragnoli teaches (Figures 1 and 2) a cutting unit for cutting continuous cigarette rods (3 and 4) comprising a supporting body (2), a cutting head (19, 20, and 29) fitted to the supporting body rotate about a first axis (17), a counter cutting device (50) engaged by the cigarette rods and through which the first axis (17) extends, a locking means (23) for locking the cutting head in position on the supporting body (Col. 3, lines 37-42). The cutting head comprises a cutting drum (29) which rotates about a second axis forming an angle with a traveling direction of the feeding of the cigarette rods. The drum has at least one radial blade (13). Serangoli further teaches the cutting unit is part of a larger device (2) that has a producing unit that produces two substantially parallel cigarette rods (Col. 1, lines 6-26; Col. 2, lines 19-48 64-68) upstream of the cutting unit. A motor

unit (inherent in the device) drives a drive shaft (8) that rotates the cutting drum around the second axis.

Seragnoli teaches all of the elements of the current invention as stated above except the locking means being motorized and comprising an automatic release means provided with an actuator for releasing the cutting head with respect to the body, a motorized actuating means separated from and structurally and operably independent the locking means and interposed between the support body and the cutting head to rotate the cutting head about the first axis, and a sensor means for determining the angle. The locking and actuating means not utilizing any structure of the other to lock or rotate the cutting head.

Terpstra teaches (Col. 6, lines 40-68; Col. 7, lines 1-68; Col. 8, lines 1-15) it is known to use a hand operated actuating means (25) to angularly adjust a cutting head (23) with respect to a work piece, and use a separate and independently operable locking means provided with an actuator (27) to lock the cutting head (23) in place once the desired angular orientation has been achieved.

Jourdan teaches (Col. 3, lines 1-23, 36-48; Col. 4, lines 1-67; Col. 5, lines 1-7) it is known to provide a motorized locking means (48 and 30) for angularly locking a cutting head (14). The motorized locking means includes an automatic releasing means (48) provided with a motorized actuator (a brake will inherently have a motorized actuator that causes the brake to apply or relieve pressure from the clamping plate 30) for releasing the cutting head with respect to a supporting body (generally 12). Jourdan further teaches the use of a motorized actuating means (32) structurally separate and

independent (both 48 and 32 are separate parts and therefore can be considered structurally independent) of the motorized locking means and interposed between the supporting body and the cutting head to rotate the cutting head (14) about a first axis to vary the angle of the cutting head. The locking means use a plate (30) to clamp the blade at a given angle. The actuating means uses a tilt arm (24) to rotate the blade. Therefore the locking and actuating means use different structure to rotate or lock the cutting head. Both use different actuators and therefore are also operably independent. Furthermore, Jourdan teaches the use of a sensor means (56) for determining the angle of the cutting head. The purpose of using motorized actuating and locking means being to allow for rapid and accurately move the cutting head from one position to another (Col. 2, lines 8-12), and to hold the cutting head in place once a specific angle has been achieved (Col. 3, lines 13-16).

Based on Jourdan and Terpstra, it is known to update locking and actuating means of a device by replacing manual locking and actuation of a cutting head with motorized means and replace manual execution of the locking means with automatic locking means. Because Seragnoli, Terpstra, and Jourdan teach means of moving and locking a pivotable rotating cutter, it would have been obvious to substitute an automatic motorized locking means and an independent motorized actuating means for the screw type locking system and manual movement of Seragnoli to achieve the predictable result of allowing for rapid and accurate movement of the cutting head with respect to the supporting body and then clamp the cutting head in place once movement is completed.

Pollock teaches (Col. 2, lines 1-29; Col. 3, lines 17-67; Col. 4, lines 7-36) it is known to provide a motorized actuating means (12) between a support (9) and a cutting head (10) to pivot the cutting head (10) about an axis to vary an angle ( $\alpha$ ) between a cutter (2) and a traveling direction (7) in order to change the length of a cut article cut from a continuous work piece. A sensor means (8), potentially optical, monitors the cutting operation and allows for the changing of the cutting angle. Since the cutting angle can be changed based on the sensor's readings the sensor monitors the angle.

It would have been obvious to have modified Seragnoli to incorporate the teachings of Pollock to provide a motorized system and sensing means to monitor and adjust the angle of the cutting head with respect to the traveling direction of the cigarette rods. Doing so would have eliminated errors associated with a user manually setting an angle by hand.

5. Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified device of Seragnoli in view of Miller et al (U.S Patent No. 4,220,077), hereinafter Miller.

The modified device of Seragnoli teaches all of the elements of the current invention as stated above except the sensor comprises a scale located on the cutting head and using the optical reader for determining the angle on the scale.

Miller teaches (Col. 4, lines 5-37) teaches it is old and well known to provide a scale (encoder 48) on a moving part of a cutting device and using the optical sensor (32 and 33) in conjunction with the scale to determine the position of the moving part.

It would have been obvious to have modified the modified device of Seragnoli to incorporate the teachings of Miller to place a scale on the cutting head in order to determine the angle of the cutting head with respect to the feed direction of the cigarette rods as doing so is a known way to use an optical sensor and would have produced the predictable result of accurately determining the angle of the cutting head.

***Allowable Subject Matter***

6. Claims 4 and 17 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter: No teaching can be found to provide the scale on a curved lateral surface of a cutting head with the curved lateral surface being part of a circle with an axis coaxial with the first axis.

***Response to Arguments***

7. Applicant's arguments filed 4/29/2011 have been considered but are not persuasive.

8. In response to applicant's argument that Terstra and Jourdan is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, applicant's problem is automating a locking and pivoting system of a cutting tool. Terstra and Jourdan specifically deal with this problem.



Regarding the limitations within the last seven lines of both claims 1 and 14, the plate (30) of Jourdan is used by the actuator (32) solely as a support and does not aid in the movement of the actuator to change the cutting angle of the blade. As disclosed in claim 14 and Figure 7, the cutting unit is part of a larger manufacturing machine. In the instant invention both the actuating and locking means are supported by the parts within this machine and therefore according to applicant's definition of what structure is utilized during use of the locking and actuating means all of the structure of the manufacturing machine is used to lock and move the blade since this structure supports both means.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Romo et al (U.S Publication No. 2004/0154448), Ceroll et al (U.S Patent No. 6,820,524), Neff (U.S Patent No. 3,552,251), Ronai (U.S Patent No. 3,630,126), and Svetlik et al (U.S Publication No. 2004/0074362) teach elements of the current invention.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to EDWARD LANDRUM whose telephone number is (571)272-5567. The examiner can normally be reached on 8:00 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/EDWARD F LANDRUM/  
Primary Examiner, Art Unit 3724  
6/8/2011